



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

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SEP 26 2002

Certified Mail No.: 7001 2510 0003 5944 3859

Theresa A. Daem, Ed. D.
Superintendent of Schools
Laguna Beach Unified School District School Facilities Corp.
550 Blumont Street
Laguna Beach, CA 92651

Subject: Complaint and Notice of Opportunity of Hearing
Docket No. TSCA-09-2002-0004

Dear Ms. Daem:

Enclosed please find a Complaint and Notice of Opportunity for Hearing concerning violations of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq.

The Complaint and Rules of Practice, 40 Code of Federal Regulations (CFR) Part 22, set forth the alternatives available to you in responding to the alleged facts, violations, proposed penalty, and opportunity for a hearing. A copy of the Rules of Practice and the PCB Penalty Policy are enclosed. It should be emphasized that if you wish to request a hearing and avoid being found in default, you must file a written answer within thirty (30) days of your receipt of your Complaint.

Whether or not you choose to request a hearing, you are encouraged to explore the possibility of settlement by contacting Brian Riedel in the Office of Regional Counsel (ORC) at (415) 972-3924.

Sincerely,

Enrique Manzanilla
Director
Cross Media Division

Enclosures

FILED

2002 SEP 26 PM 2:31
U.S. EPA REGION IX
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

_____)	
In the matter of:)	Docket No. TSCA-09-2001-0004
)	
LAGUNA BEACH UNIFIED SCHOOL)	COMPLAINT AND NOTICE OF
DISTRICT FACILITIES CORPORATION))	OPPORTUNITY FOR HEARING
)	
Respondent.)	
_____)	

I

COMPLAINT

1. This is a civil administrative action instituted under the authority of Section 16(a) of the Toxic Substances Control Act ("TSCA"), as amended, 15 U.S.C. §2615(a). The Administrator of the United States Environmental Protection Agency ("EPA") has delegated the authority to file this action under TSCA to the Regional Administrator. The Regional Administrator of Region IX further delegated the authority to bring this action under TSCA to the Director of the Cross Media Division.

2. The Complainant is the Director, Cross Media Division, EPA Region IX.

3. The Respondent is LAGUNA BEACH UNIFIED SCHOOL DISTRICT FACILITIES CORPORATION ("Respondent").

4. This Complaint serves as notice that the Complainant has

reason to believe that Respondent has violated Section 15 of TSCA [15 U.S.C. §2614] as follows:

Count I

5. Paragraphs 1 through 4 of this Complaint are hereby incorporated by reference as if the same were set forth herein in their entirety.

6. Respondent Laguna Beach Unified School District Facilities Corporation, a California corporation, is a "person" within the meaning of 40 C.F.R. § 761.3 who operates a facility located at 550 Blumont Street, Laguna Beach, CA 92651 (hereinafter "Facility").

7. On April 13, 2000, an authorized representative of the EPA conducted an inspection at the Facility to determine compliance with Federal Regulations, 40 C.F.R. Part 761 et seq., governing PCBs.

8. At the time of the inspection Respondent owned and operated a PCB Transformer at the Facility and is subject to 40 C.F.R. § 761.30.

9. Subject to the limitations set forth in Section 761.30(a)(1), all owners of PCB Transformers must register their transformers with the EPA no later than December 28, 1998. 40 C.F.R. § 761.30(a)(1)(vi)(A).

10. At the time of the inspection, Respondent failed to register the PCB Transformer in use at the Facility with the EPA

in violation of 40 C.F.R. § 761.30(a)(1)(vi)(A) and 15 U.S.C. § 2614(1)(C).

Count II

11. Paragraphs 1 through 4 and 6 through 8 of this Complaint are hereby incorporated by reference as if the same were set forth herein in their entirety.

12. Beginning February 5, 1990, each owner or operator of a facility using a PCB Transformer shall develop and maintain at the facility all annual records and the written annual document log of the disposition of PCBs and PCB Items. The annual records and annual document log shall be available for inspection at the facility where they are maintained by authorized representatives of EPA during normal business hours. 40 C.F.R. § 761.180(a).

13. The written annual document log shall include the total number of PCB Transformers and total weight in kilograms of PCBs contained in the transformers remaining in service at the end of the calendar year. 40 C.F.R. § 761.180(a)(2)(iv).

14. At the time of the inspection, Respondent failed to develop and maintain a written annual document log in violation of 40 C.F.R. § 761.180(a) and 15 U.S.C. § 2614(1)(C).

Count III

15. Paragraphs 1 through 4 and 6 through 8 of this Complaint are hereby incorporated by reference as if the same were set forth herein in their entirety.

16. The access area to a PCB Transformer location is required to be marked with an M₁ label as required by 40 C.F.R. § 761.40(a). The access area to a PCB Transformer location includes the vault door, machinery room door, or other means of access , other than grate or manhole covers. 40 C.F.R. § 761.40(j)(1).

17. At the time of the inspection, Respondent failed to mark appropriately the access area to the PCB Transformer in violation of 40 C.F.R. § 761.40(j)(1) and 15 U.S.C. § 2614(1)(C).

II

PROPOSED CIVIL PENALTY

18. The proposed civil penalty has been determined in accordance with Section 16 of TSCA [15 U.S.C. § 2615(a)]. For purposes of determining the amount of any penalty to be assessed Section 16(a)(2)(B) requires EPA to take into account:

- (1) The nature,
- (2) Circumstances,
- (3) Extent, and
- (4) Gravity of the violation or violations and,
- (5) With respect to the violator,
 - i) Ability to pay,
 - ii) Effect on ability to continue to do business,
 - iii) Any history of prior such violations,

iv)The degree of culpability, and

v)Such other matters as justice may require.

To develop the proposed penalty in the Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's Polychlorinated Biphenyls Penalty Policy dated April 9, 1990 ("Penalty Policy") as adjusted by the Debt Collection Improvement Act of 1996. A copy of the Penalty Policy and the relevant supplements are enclosed with this Complaint. The Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

Count I

USE VIOLATION (Failure to register a PCB Transformer with EPA)
..... \$3,300
40 C.F.R. § 761.30(a)(1)
15 U.S.C. § 2614(1)(C)

Count II

RECORDKEEPING VIOLATION (Failure to develop and maintain an
annual document log).....\$1,100
40 C.F.R. § 761.180(a)
15 U.S.C. § 2614(1)(C)

Count III

MARKING VIOLATION (Failure to mark the means of access to the PCB
Transformer).....\$3,300
40 C.F.R. § 761.40(j)(1)
15 U.S.C. § 2614(1)(C)

Total Proposed Civil Penalty.....\$7,700

III

NOTICE OF OPPORTUNITY FOR HEARING

A. Administrative Hearing

19. You have the right to request a hearing to contest any material fact set forth in the Complaint or the appropriateness of the proposed civil penalty. If you wish to request a hearing and avoid being found in default, you must file a written Answer to the Complaint with the Regional Hearing Clerk, EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105.

20. The Answer should contain: (1) A statement of the facts which constitute the grounds of defense and (2) a statement of the facts which you intend to place at issue in the hearing. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure to deny any of the factual allegations in the Complaint constitutes admission of the undenied allegations.

21. A failure to file a written Answer within thirty days of receipt of the Complaint is a waiver of your right to a hearing. A Default Order will thereafter be issued by the Regional Administrator and the proposed civil penalty shall be imposed without further proceedings.

22. The public hearing that you request will be held in a location determined in accordance with 40 C.F.R. Part 22.

Hearings held in the assessment of these civil penalties will be conducted in accordance with the provisions of the Administrative Procedure Act [5 U.S.C. § 522 et seq.] and the Rules of Practice at 40 C.F.R. Part 22 [45 Fed. Reg. 24360], a copy of which accompanies the Complaint.

B. Informal Settlement Conference

23. In addition to an Answer and Request for Hearing, you may confer informally with EPA to discuss the alleged facts, violations, or amount of the proposed civil penalty. An informal conference does not, however, affect your obligation to file a written Answer within thirty days of your receipt of the Complaint. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.

24. Any settlement reached as a result of an informal conference will be embodied in a written Consent Agreement and Final Order and will constitute a waiver of your right to hearing on any matter to which you have stipulated.


25. If a settlement cannot be reached through an informal conference, the filing of a written Answer within thirty days of service of the Complaint upon you will preserve your right to a hearing.

26. EPA encourages all parties against whom a civil penalty is proposed to explore the possibility of settlement. To request an informal conference, you should contact Yoshiro Tokiwa at (415) 947-4172 or your attorney should contact Brian Riedel at

(415) 972-3924.

Dated:

9/26/02


Enrique Manzanilla
Director, Cross Media Division
United States Environmental
Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105